

Amend Section 670.2  
Title 14, California Code of Regulations  
Re: Plants of California Declared to Be Endangered, Threatened or Rare  
[Marin bent grass (*Agrostis blasdalei* var. *marinensis*)  
Hanging Gardens manzanita (*Arctostaphylos edmundsii* var. *parvifolia*)  
Slender-pod jewelflower (*Caulanthus stenocarpus*)  
Truckee barberry (*Mahonia sonnei*)]

- 1-

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

Alternatives to the petitioned action, delisting, have not been considered since available scientific information supports the delisting of Marin bent grass, slender-pod jewelflower, Hanging Gardens jewelflower, and Truckee barberry.

(b) No Change Alternative:

Marin bent grass, slender-pod jewelflower, and Hanging Gardens manzanita are currently listed as rare species under the Native Plant Protection Act (NPPA) (Section 1900 *et seq.* Fish and Game Code). Truckee barberry is currently listed as endangered pursuant to the California Endangered Species Act (CESA) (Section 2050 *et seq.* Fish and Game Code). The rare listing affords protection under CEQA and the NPPA, except for provisions specified in the NPPA. Protection under CEQA for state-listed rare species is generally equivalent to that for threatened and endangered species with respect to the requirement for mitigation of adverse impacts; however, state-listed rare species are not afforded the additional legal protection available to threatened or endangered species under CESA.

Truckee barberry is currently listed as endangered. Under CESA, "endangered species" means a native species or subspecies of bird, mammal, fish, amphibian, reptile, or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, overexploitation, predation, competition, or disease (Fish and Game Code, Section 2062). The CEQA Guidelines provide for a mandatory finding of significance requiring preparation of an Environmental Impact Report if a project may result in a reduction in numbers or restriction of range of a rare, threatened, or endangered species (CEQA Guidelines, Section 15065). This is especially true for a species listed as endangered.

The Department does not believe that maintaining Marin bent grass, slender-pod jewelflower, and Hanging Gardens manzanita as rare species or maintaining Truckee barberry as an endangered species is appropriate since each species cannot be differentiated from the species under which they are now placed: Blasdale's bent grass, San Diego jewelflower, Little Sur manzanita, and creeping barberry, respectively. The Department is fulfilling its statutory obligation in making this proposal (Sections 2055, 2073.5 and 2074.6, Fish and Game Code).

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Although the statutes of the California Endangered Species Act (CESA) do not specifically prohibit the consideration of economic impact in determining if listing is warranted, the Attorney General's Office has consistently advised the Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing or delisting process.

CESA is basically a two-stage process. During the first stage, the Commission must make a finding on whether or not the petitioned action is warranted. By statute, once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this second stage, the Commission follows the statutes of the Administrative Procedure Act (APA).

The provisions of the APA, specifically sections 11346.3 and 11346.5 of the Government Code, require an analysis of the economic impact of the proposed regulatory action. While Section 11346.3 requires an analysis of economic impact on businesses and private persons, it also contains a subdivision (a) which provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws. In this regard, the provisions of CESA leading to a finding are in apparent conflict with Section 11346.3, which is activated by the rulemaking component of CESA.

Since the finding portion of CESA is silent to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 does not exclude the requirement for economic impact analysis. While the Commission does not believe this is the case, an abbreviated analysis of the likely economic impact of the proposed regulation change on businesses and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

Delisting of Marin bent grass, slender-pod jewelflower, Hanging Gardens manzanita, and Truckee barberry will remove them from the provisions of the Native Plant Protection Act and/or CESA and consideration by applicants

undertaking projects subject to CEQA. This delisting action is not expected to result in any significant adverse economic effect on small business or significant cost to private persons or entities undertaking activities subject to CEQA. Because mitigation as a result of lead agency actions under CEQA will not be required, the delisting action will not result in an increase in the cost of a project.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. Delisting these species will not result in any significant cost to private persons or businesses undertaking activities subject to CEQA and may result in a cost savings to such persons and businesses.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

### Updated Informative Digest/Policy Statement Overview

No modifications were made to the original Informative Digest/Policy Statement Overview of the Initial Statement of Reasons.

The Fish and Game Commission amended §670.2 of Title 14, CCR, to remove Truckee barberry from the list of endangered plants (subsection (a)) and to remove Marin bent grass, Hanging Gardens manzanita, and slender-pod jewelflower from the list of rare plants (subsection (c)) at its June 27, 2008 hearing in Sacramento, California. This action is based upon documentation that the above species no longer warrant retention on the lists of rare or endangered species since they are not recognized by the scientific community as valid species.